

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;)	Civ. No. CV03 00385 SOM-LEK
)	(Copyright)
Plaintiff,)	
)	PLAINTIFF WAYNE BERRY'S
vs.)	MOTION FOR ORDER
)	WITHDRAWING THE
HAWAIIAN EXPRESS SERVICE,)	REFERENCE TO THE
INC., a California corporation; et al.,)	MAGISTRATE OF POST-TRIAL
)	MOTIONS RELATED TO
)	ATTORNEYS FEES AND COSTS
)	
Defendants.)	
_____)	

**PLAINTIFF WAYNE BERRY'S MOTION FOR ORDER WITHDRAWING
THE REFERENCE TO THE MAGISTRATE OF POST-TRIAL MOTIONS
RELATED TO ATTORNEYS FEES AND COSTS**

Comes now Plaintiff Wayne Berry, by and through his undersigned counsel and hereby respectfully moves this Court for an order withdrawing the reference of certain post-trial fee and costs related motions and to have the matters still pending resolved together rather than piece-meal.

The Court of Appeals has stayed the appellate proceedings awaiting this Court's disposition of the post-trial fee and costs related motions. This Motion is brought on the grounds that the Magistrate's Judge has had pending since March of this year post-trial fee and cost related motions apparently referred to it by the

District Court. Despite recently ruling for two of the defendant groups, the Magistrate has not yet ruled on the motions pending for Plaintiff, the Fleming Companies, Inc. Post-Confirmation Trust or the former Fleming employees. The effect of this piece-meal approach is to insure that this case will likely proceed to the Court of Appeals on several dockets. Moreover, by choosing to act on certain parties motions while leaving Plaintiff's motion in limbo the Magistrate gives an appearance of a lack of fairness directed to Plaintiff such that this Court must exercise its supervisory role in matters referred to the Magistrate to prevent further prejudice to the Plaintiff.

This Motion is brought pursuant to L.R. 7 and 72.8 and is supported by the Memorandum in Support, the Declaration of Counsel and all the exhibits attached thereto and all the record of this case, all of which is incorporated by this reference.

DATED: Honolulu, Hawai'i, November 28, 2006.

/s/ Timothy J. Hogan
TIMOTHY J. HOGAN
Attorney for Plaintiff WAYNE BERRY